Message

From: Hubbard, Joseph [Hubbard.Joseph@epa.gov]
Sent: 4/23/2020 8:11:13 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips, April 23, 2020

Daily Clips
April 23, 2020

COVID-19

Air Purifiers Making Covid-19 Claims Face Legal, Financial Risks

EPA Deregulatory Agenda Speeds Ahead But Possible COVID Hurdles Await

Fake Covid-19 Products Sold on Facebook, Other Sites, EPA Says

'Ghost flights' haunt the skies, increase emissions

Shoppers Go Green to Clean Because There Is Nothing Else Left

Enforcement

Feud with Democrats escalates over enforcement plans

OVERSIGHT DEMS PRESS WHEELER ON ENFORCEMENT

Emissions

Permian Oil Fields Leak Enough Methane for 7 Million Homes (1)

Satellites find highest U.S. methane emissions ever recorded

Super-Polluting Methane Emissions Twice Federal Estimates in Permian Basin, Study Finds

Chemicals

9th Circuit finds 'egregious' delay on pet-collar pesticide, gives EPA 90 days to act

9th Circ. Slams EPA's 'Egregious' Delay On Pet Pesticide

EPA Asbestos Review Delayed Due to COVID-19 Pandemic

Groups Argue Weed Control More Difficult Without Glyphosate

Wheeler touts work on PFAS plan, enforcement, rollbacks

SUPERFUND

Environmentalists Seek To Close 'Loopholes' In Bid To Curb New PFAS Uses

EPA Steps Up Health Protocol for Cleanup at Toxic Waste Sites

High Court's CERCLA Ruling Adds Uncertainty To Cleanups, Lawyers Warn

INSIGHT: SCOTUS Montana Superfund Ruling Will Have Ripple Effect

Water

Justices unveil new test on Clean Water Act's scope

Supreme Court hands environmentalists a win in water pollution case

Supreme Court rejects EPA's narrow view of Clean Water Act

Supreme Court rules against EPA on wastewater

Supreme Court rules sets new test for Clean Water Act permitting

++

E&E

Feud with Democrats escalates over enforcement plans

https://www.eenews.net/greenwire/2020/04/23/stories/1062952295

By Kelsey Brugger

EPA is pushing back against mounting criticism from congressional Democrats that the agency is "suspending enforcement of environmental laws" during the COVID-19 pandemic.

In a series of letters released this week, Democratic committee leaders said EPA has abandoned its responsibility to police polluters, exacerbating respiratory health problems, especially for vulnerable populations. EPA said the committees' claims were "false."

The EPA policy, released March 26 with no end date, gives the agency discretion in reprimanding companies that do not comply with routine monitoring and reporting during the outbreak.

It also directs companies to document pandemic-related noncompliance and present it to regulators "upon request" (*E&E News PM*, March 26).

EPA has declined to release information about what companies have informed the agency that they do not intend to comply with routine enforcement during the pandemic.

The House Oversight and Reform Committee requested copies of all incidents of noncompliance by regulated industries — on a rolling basis — as well as all communications EPA had with industry groups in the weeks leading up to its release of the policy March 26.

Chairwoman Carolyn Maloney (D-N.Y.) requested to be briefed by May 1. She also stressed that the policy was "unnecessary" because EPA already has authority to waive penalties in cases of hardship.

The letter included quotes from Obama EPA officials, including former chief Gina McCarthy, who denounced the policy as "an open license to pollute." She now heads the Natural Resources Defense Council, which is suing EPA over the policy.

More concerns

The Energy and Commerce, Transportation, and Appropriations committees raised similar concerns and asked EPA whether it had evaluated how the policy would affect human health and the environment.

"This is particularly important for those communities who have long borne a disproportionate burden of pollution and who, according to multiple reports, are experiencing disproportionate mortality rates from COVID-19," wrote Energy and Commerce Chairman Frank Pallone (D-N.J.), Transportation and Infrastructure Chairman Peter DeFazio (D-Ore.) and Interior-EPA Appropriations Subcommittee Chairwoman Betty McCollum (D-Minn.).

On Tuesday, Michigan Sens. Gary Peters (D) and Debbie Stabenow (D) underscored the impact of COVID-19 on minority and low-income populations. They wrote a letter to EPA pointing to research from the Environmental Law & Policy Center, which found a "significant increase" of EPA Region 5 facilities out of compliance with the Clean Water Act in 2019 compared with averages in fiscal 2012-2017.

And yesterday, Rep. Bobby Rush (D-Ill.), who chairs the Energy and Commerce Subcommittee on Energy, and 83 of his Democratic colleagues called on EPA to ensure minority communities have equal access to clean air protections, asserting that EPA's actions were "unacceptable."

"Studies make clear that minority and low-income communities unevenly bear the brunt of the consequences associated with fine particulate matter air pollution," he wrote in a letter, adding that the National Academy of Sciences found that African American and Latino communities are exposed to an average of 60% more air pollution than they cause.

And research has linked long-term air pollution exposure to an increased COVID-19 mortality rate, Democrats noted.

"Keeping in mind the connectivity of these studies, minorities account for 60 percent of all U.S. COVID-19 deaths despite representing only 40 percent of the current population," Rush and colleagues wrote.

'She knows better'

In recent days, EPA has forcefully defended its actions. "Calling the policy a 'moratorium' only continues to amplify false information and misunderstanding for the public," a spokesperson said an emailed statement.

The spokesperson specifically rebutted McCarthy's statement, asserting that "she knows better." The spokesperson said that, under her leadership, the Obama EPA exercised its enforcement discretion in a number of instances after Superstorm Sandy in 2012.

"Many of those actions involved suspending enforcement of entire sections of the Code of Federal Regulations, as well as state implementation plan and permit requirements, rather than making facility specific determinations," said the agency aide.

Yesterday, EPA Administrator Andrew Wheeler, on public radio for Earth Day, defended the policy and pledged to "go after" any companies that "increase their emissions at all" (*Greenwire*, April 22).

And last week on an American Bar Association panel, EPA enforcement chief Susan Bodine stressed that the policy's approach is necessary because the agency does not have the staff to monitor more than 4 million facilities throughout the country (*E&E News PM*, April 17).

++

E&E

Wheeler touts work on PFAS plan, enforcement, rollbacks

https://www.eenews.net/greenwire/2020/04/23/stories/1062952089

By Ariana Figueroa

EPA Administrator Andrew Wheeler praised agency work on rollbacks and toxic chemicals as well as enforcement matters in his "State of the Agency" address to employees.

In an internal email obtained by E&E News, Wheeler sent employees the virtual speech and said he was proud of the agency's action plan on toxic chemicals known as per- and polyfluoroalkyl substances, or PFAS; the implementation of the Toxic Substances Control Act; enforcement measures; and rollbacks of Obama-era rules including the Waters of the U.S. (WOTUS) rule and Safer Affordable Fuel-Efficient (SAFE) Vehicles rule.

A video of the speech was uploaded to YouTube.

Wheeler said the agency has set recommendations for cleanup of PFAS, issued a proposed rulemaking and increased funding for PFAS research under the action plan.

"This plan represents a pivotal moment in the history of the agency and an important moment for public health and environmental protection," Wheeler said.

PFAS is a class of 7,000 chemicals that can be found in many consumer products like ski wax and nonstick pans. Studies have linked the chemicals, which have polluted waterways, to multiple health problems such as thyroid issues and some cancers.

He said the agency added 160 types of PFAS to EPA's Toxics Release Inventory list, requiring companies to report uses of the chemicals to the agency.

Wheeler also touted the agency's decision in February to regulate two of the most studied PFAS, known as PFOS and PFOA, in drinking water. EPA planned to issue proposed drinking water standards for the two chemicals last year.

"The truth is PFAS and PFOS can't be studied and regulated in separate silos," Wheeler said. "These old habits create many missed opportunities. It takes a whole agency approach, aligning land, water and research offices together with a single mission."

Wheeler also talked about bringing clarity to two rules, the SAFE Vehicles rule and WOTUS. He said the SAFE Vehicles rule "strikes the right balance between the environment, the auto industry and safety of American drivers."

The Trump administration finalized the clean cars rollback in March and advocates raised concerns that the move could undermine public health because of increased air pollution (Greenwire, March 31).

EPA's own data concluded that the rollback could cause nearly 1,000 premature deaths from air pollution released by car tailpipes (Climatewire, April 2).

Wheeler added that the agency has continued strong enforcement efforts, even though a report from EPA's Office of Inspector General contradicts that. The report found that enforcement for inspections, penalties and other actions have fallen in the past 12 years (Greenwire, April 1).

He added that the agency is also taking legal action against those who sell fraudulent products that claim to protect people from getting COVID-19 (Greenwire, April 10). The agency, along with the U.S. Customs and Border Protection, intercepted shipments of illegal products.

Wheeler also described future EPA initiatives including working with countries to tackle marine waste such as plastic and debris. He said his trips to Israel and Brazil earlier this year were centered around finding solutions to polluted waterways filled with plastic.

He added that the agency also plans to publish proposed hazard standards for lead dust later this spring. Advocates sued EPA over the rule because they say it doesn't do enough to protect children (Greenwire, Aug. 1, 2019).

Wheeler ended his speech with a quote between two protagonists from his favorite book, "The Fellowship of the Ring," which is the first part of "The Lord of the Rings."

"I wish it need not have happened in my time," said Frodo Baggins.

"So do I," said Gandalf, "and so do all who live to see such times. But that is not for them to decide. All we have to decide is what to do with the time that is given us."

Reporters Kevin Bogardus and Maxine Joselow contributed.

++

BNV: SCOTUS Superfund Ruling Could Spawn New State Law Claims (1)

April 21, 2020, 2:16 PM; Updated: April 21, 2020, 3:44 PM

Listen

- ‘Entirely new category of state law actions’ could emerge from ruling
- Litigation expected from property owners, environmentalists

New lawsuits from frustrated property owners and environmental groups could arise from the Supreme Court’s Monday opinion on a dispute between landowners and Atlantic Richfield Co. at a Montana Superfund site, attorneys said.

A group of nearly 100 Montana landowners, whose properties are part of the Anaconda Co. Smelter Superfund site, sought additional soil cleanup under state law after the Environmental Protection Agency and Atlantic Richfield carried out an agreed-upon remedy.

Their dispute rose to the U.S. Supreme Court, where the justices decided Monday the EPA and Montana courts would have to figure out what happens next.

"This likely opens up an entirely new category of state law actions challenging EPA-approved clean-ups," said Shoshana Schiller, a partner at Manko, Gold, Katcher & Fox LLP in Bala Cynwyd, Pa. "I would venture a guess that it's going to result in a lot of litigation from adjoining property owners, but also environmental groups."

The Supreme Court determined the landowners qualify as "potentially responsible parties," or PRPs. That status means the landowners may be liable for remediation costs and must seek EPA's approval for any further cleanup at their properties. But in other cases where nearby residents think the EPA hasn't done enough to control the spread of toxic waste, the rules are less clear.

"The risk here is that there are landowners, who are not PRPs, that could suddenly have leverage to get the remedial options they want," said Joshua B. Frank, partner at Baker Botts LLP in Washington.

'Try to Open This Door'

Site-based cleanup steering committees, made up of multiple PRPs, need to prepare for lawsuits from nearby property owners, said Michael Blumenthal, attorney at McGlinchey Stafford PLLC in Cleveland.

"There are a lot of plaintiffs' lawyers that are going to try to open this door," he said.

On the other hand, Sara Colangelo, director of the environmental law program at Georgetown University, said the EPA's public comment opportunities already provide an outlet for cleanup concerns, making a flood of state law claims unlikely.

"In reality, that's going to be a very small universe of instances," she said.

The EPA is also unlikely to change its mind about cleanup plans after they're finalized, Colangelo said.

"The decision-making process is so thorough and so long, I don't see EPA turning back and second guessing that decision," she said.

There may also be cases where states want to initiate remediation at a contaminated site, but may now feel obligated to seek EPA's approval first. That could slow the cleanup process and affect a property's market value, said Noah Perch-Ahern, partner at Greenberg Glusker Fields Claman & Machtinger LLP in Los Angeles.

Persistent Risks

The threat of nearby landowners suing PRPs under state law during the cleanup process has "always been a concern," Blumenthal said.

Though the court's decision resolved some questions of federal law in the Montana case, similar situations could still pop up.

"This will be another element that companies will have to take into account when they're analyzing settlements with EPA under CERCLA," or Superfund law, said Martha Thomsen, senior associate at Baker Botts LLP in Washington.

(Adds comments from Sara Colangelo in ninth through 12th paragraphs.)

To contact the reporter on this story: Sylvia Carignan in Washington at scarignan@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Rebecca Baker at rbaker@bloombergenvironment.com

++

Washington Examiner
Liberal media gives Trump EPA head Andrew Wheeler a bad rap
https://www.washingtonexaminer.com/opinion/epa-administrator-andrew-wheeler-gets-a-bad-rap-from-liberal-media
By Brad Polumbo

Liberal journalists routinely describe Environmental Protection Agency Administrator Andrew Wheeler as a "former coal lobbyist" and "climate change denier," suggesting that he is destroying the EPA from within and in cahoots with big business. But this narrative is essentially wrong and misleading on all counts.

I interviewed Wheeler recently to discuss how his agency was marking the 50th anniversary of Earth Day and his tenure more broadly. I encountered a very different man than the one you'd read about in the *New York Times*.

"When Earth Day began in 1970, Americans faced a drastically different environment than we do today," Wheeler said. "I am proud of the work our nation has done, and continues to do, to be a leader in clean air and clean water progress."

Our conversation led me to ask the administrator about the most common criticisms leveled against him.

He explained that perhaps the most frustrating one is the way liberal media outlets always introduce him as a "former coal lobbyist." This is an example of something that is technically true but extremely misleading.

Wheeler was, for just over eight years, an energy lobbyist. Among his many clients were nuclear power companies and, yes, coal companies and workers. But the decision made by liberal journalists to only highlight *coal* in their descriptor is undoubtedly an intentional and political one.

So, too, when "former coal lobbyist" is used as the only descriptor to introduce the administrator, this ignores Wheeler's arguably much more relevant stint at the EPA early in his career and several decades of work in Congress on environmental issues. Lobbying was one job he held for a small part of his long career in environmental policy. (For what it's worth, Wheeler's qualifications are rather impressive: He holds not just a bachelor's degree in science but also a law degree and an MBA).

Something tells me that a similar EPA head appointed by a Democrat, who had once worked as an energy lobbyist with solar as a client, would instead be described by the liberal media as a "career public servant" and "veteran legislative expert."

We also discussed Wheeler's alleged "climate change denial," which is simply not a thing. He does believe man-made climate change is real, he does want to reduce carbon emissions, and he strongly supports nuclear power — the most efficient, emissions-free power source available and one that, bizarrely, many Democrats oppose despite claiming to believe in global warming.

Wheeler did stress that he doesn't believe climate change is the "existential threat" Rep. Alexandria Ocasio-Cortez makes it out to be when she says we're all going to die in 12 years — or, at least, if we don't destroy our economy in the next 10 years.

The administrator also explained that, for him, the most important environmental issue right now is clean water, not climate change. On a global basis, nearly 1 million people still die every year from the lack of access to safe drinking water. (And Flint, Michigan, shows this isn't just an international issue, but still one here as well).

Wheeler was not denying climate change, of course, but it is not his top priority. If liberal journalists want to argue that Wheeler doesn't take climate change seriously enough, isn't adequately focusing on it, or doesn't support the appropriate climate change policies, this might provide the occasion to do so. It's at least a fair question to debate. But it's simply a lie to label Wheeler a "climate change denier." This is an example of how the charge becomes a bad-faith smear upon anyone who isn't googly eyed at the "Green New Deal."

Examples of this bad-faith coverage of Wheeler and his EPA abound in the policy arena as well.

Take, for example, the administration's "Strengthening Transparency in Regulatory Science." It's a complicated rule, but essentially, it would require that the EPA only use studies in their policymaking for which the data is made publicly available and transparent — not secret. As for the chorus of privacy and methodological concerns raised, Wheeler said researchers can adjust the way they do studies, and data can be anonymized. He also pointed out that the rule allows EPA to make exceptions when necessary.

"Our regulations will be better understood on both sides," Wheeler told me. "I really see it as an open government proposal … getting data out there for people to look at."

This eminently reasonable suggestion that the federal government does not blindly make rules based on secret data has been met with a shriek from the liberal media, which has implicitly and explicitly deemed it an assault on science. Wheeler complained that critics are misleadingly calling it the "secret science rule" when, if anything, it's really the opposite. The agency is still taking comments and working on the final draft of the rule, but most of the engagement has been made in bad faith.

"When finalized, the science transparency rule will ensure that all important studies underlying significant regulatory actions at the EPA, regardless of their source, are available for a transparent review by qualified scientists," Wheeler said.

And while Wheeler's EPA has indeed played a role in the Trump administration's broader pro-growth deregulatory agenda, the administrator also stressed to me the key pro-environment work they've done.

For instance, he pointed out that, last year, they cleaned up more contaminated Superfund sites than in any year since 2001. He touted the work they've done pairing the GOP tax bill's economic "opportunity zones" with EPA-sponsored Brownfield grants to promote environmental cleanup. (For some *completely unknown* reason,

these accomplishments made it into almost none of the news reports I reviewed while preparing for our interview.)

In our interview, Wheeler certainly didn't come across as the anti-government fanatic that the liberal media makes him out to be. While dedicated to promoting efficiency in the EPA and open to downsizing it, the administrator actually cited as his biggest concern the agency's inability to retain employees for more than a few years. (This is due in part, he said, to millennials' flighty job habits.) That's not exactly a telling sign of someone hell-bent on abolishing the EPA from within.

This disconnect between liberal media coverage and reality spreads throughout Wheeler's tenure at EPA. It surely can't be good for democracy to have so many people relying on a deeply distorted portrayal of their government for basic information.

++
++

DTN/The Progressive Farmer
Groups Argue Weed Control More Difficult Without Glyphosate
https://www.dtnpf.com/agriculture/web/ag/news/world-policy/article/2020/04/22/groups-argue-weed-control-difficult-2
By Todd Neeley

The action was in response to a petition for review filed in March by the Rural Coalition, Organizacion en California de Lideres Campesinas, Farmworker Association of Florida, Beyond Pesticides and the Center for Food Safety with the Ninth Circuit.

Those groups allege EPA violated the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) when it approved the interim registration, and also violated the agency's duties under the Endangered Species Act by not consulting with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service before issuing its interim decision.

EPA first proposed the interim glyphosate registration in April 2019 and accepted public comments until September 2019, before finalizing it in January 2020. The agency concluded the herbicide poses no risk to human health and can be used safely with certain drift mitigation requirements.

EPA also noted that this was only an interim registration because more data analysis is still required, including endangered species assessments under the ESA. (See more on the registration decision here: https://www.dtnpf.com/...).

The herbicide's registration review, which started in 2009, is likely to push on into 2021, according to EPA's website.

In the motion to intervene, the ag groups said combating weeds without glyphosate could be costly.

"As the National Cotton Council has explained, weeds can reduce yields by an average of 30%," the motion said.

"And for sorghum, the average crop loss due to uncontrolled weeds would be 47%. Before glyphosate, some growers would cope with weeds by using a combination of up to 13 different herbicides, all requiring complex application timing and other burdensome requirements. Glyphosate allowed growers to use fewer and less toxic herbicides. The relief requested by petitioners could jeopardize EPA's broader, years-long effort to finalize its registration review of glyphosate and may ultimately impact glyphosate registrations more generally."

The court filings are just another development in a series of complicated legal battles over glyphosate, which has pitted EPA and the chemical's registrant, Bayer, against environmentalists and consumers. Read more about those legal challenges, including the petition to vacate the interim registration, here: https://www.dtnpf.com/….

++

Law360
9th Circ. Slams EPA's 'Egregious' Delay On Pet Pesticide
https://www.law360.com/articles/1266448
By Michael Phillis

The Ninth Circuit on Wednesday slammed the U.S. Environmental Protection Agency for failing to act on an environmental group's long-running request to halt the sale of a pesticide used in pet products that threatens children's health, calling the agency's conduct "nothing short of egregious."

The EPA has 90 days to decide whether to prevent the distribution of the pesticide tetrachlorvinphos, or TCVP, that is used in pet products, as the Natural Resources Defense Council has requested, U.S. Circuit Judge Ronald M. Gould wrote for a three-judge panel. The group originally made the request in 2009, but the agency has "kicked the can down the road" by breaking its promises and missing deadlines, according to the panel.

"For more than a decade, the EPA has frustrated NRDC's ability to seek judicial review by withholding final agency action, all the while endangering the wellbeing of millions of children and ignoring its 'core mission' of 'protecting human health and the environment,'" Judge Gould wrote.

At the Ninth Circuit, the EPA has promised action on the decision by June or September 2021 — a projection the panel emphasized in italics on Wednesday, noting it would be 12 years since the NRDC filed its original administrative petition.

A representative for the EPA said the agency was reviewing the decision.

The panel granted the NRDC's mandamus petition, setting timelines for the agency to act and schedules based on what course the EPA decides to take.

Under the Federal Insecticide, Fungicide, and Rodenticide Act, the EPA must determine if pesticides should be registered and sold. If a pesticide is determined to be an unreasonable human health risk, the EPA can "cancel the pesticide's registration" and prevent its distribution. The NRDC asked the agency to do so for TCVP, which can be absorbed by humans through pet products like collars, according to the panel.

The EPA initially sat on the petition for five years. The NRDC filed a mandamus petition with the D.C. Circuit in 2014, and the EPA ended up denying the petition because a just-finished risk assessment said the pesticides risks were "below the agency's level of concern," according to the opinion. The NRDC then challenged that finding to the Ninth Circuit.

The EPA asked for a chance to reconsider the risks and eventually concluded TCVP was a public health risk, saying the larger group of pesticides of which TCVP is a subset had been connected to developmental delays in infants and a range of other problems. After the risk assessment was issued, the agency promised to act on the NRDC's request within 90 days, but the 90 days came and went without a response, the panel said.

Instead, in March 2017, the EPA told the group it was going to conduct a review of a TCVP-related issue. After promising the NRDC it would make a decision, a revised agency schedule made no mention of TCVP, according to the opinion.

"The year of 2017 ended without a proposed decision or an updated schedule for review of TCVP, and so did 2018," the panel said. Eventually in May 2019, NRDC filed the mandamus petition with the court.

The panel said a decade was well past the "reasonable time" the EPA had to act.

"It has repeatedly taken the action of NRDC or a court to prompt any movement by the EPA," the panel said.

Judge Gould rejected the EPA's assertion that it had made progress by talking to a company — described in the opinion as "the lone registrant of TCVP products" — about conducting a study on pet products. The court noted that voluntary discussions with the company ended in 2017 unsuccessfully, and the EPA didn't move to force the company to cooperate until "after NRDC filed this suit."

"Its delay has not been one of weeks or months, but of years, and is all the more glaring because of its history of inaccurate representations and mooted lawsuits," the judges said.

The panel also rejected the EPA's assertion that forcing it to prioritize the NRDC's request over the review of other pesticides may be "detrimental to overall protection of human health," noting that "millions of young children" may face risks from exposure to the pesticide at issue.

Mae Wu, senior director of the health and food program at the NRDC, called the outcome a victory.

"The EPA has indeed been strategically delaying important decisions to remove dangerous pesticides from the market — not just this one, but another cousin to this pesticide, chlorpyrifos," Wu told Law360 in an email. "The hope is that the

EPA heeds the court's reminder of its core mission and gets this — and other toxic chemicals — off the market, so that we don't have to keep bringing these kinds of lawsuits."

Judges R. Guy Cole Jr., Ronald M. Gould and Mary Murguia sat on the panel for the Ninth Circuit.

The NRDC is represented in-house by Mae Wu, Aaron Colangelo, Peter J. DeMarco and Ian Fein.

The EPA is represented by Jonathan D. Brightbill and Eileen T. McDonough of the U.S. Department of Justice's Environmental Defense Section.

The case is Natural Resources Defense Council Inc. v. U.S. Environmental Protection Agency et al., case number 19-71324, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Daniel King.

++

InsideClimate News
Super-Polluting Methane Emissions Twice Federal Estimates in Permian Basin, Study Finds
https://insideclimatenews.org/news/22042020/permian-basin-methane-emissions-texas-new-mexico
BY PHIL MCKENNA

Methane emissions from the Permian basin of West Texas and southeastern New Mexico, one of the largest oil-producing regions in the world, are more than two times higher than federal estimates, a new study suggests.

The findings, published Wednesday in the journal Science Advances, reaffirm the results of a recently released assessment and further call into question the climate benefits of natural gas.

Using hydraulic fracturing, energy companies have increased oil production to unprecedented levels in the Permian basin in recent years.

Methane, or natural gas, has historically been viewed as an unwanted byproduct to be flared, a practice in which methane is burned instead of emitted into the atmosphere, or vented by oil producers in the region. While new natural gas pipelines are being built to bring the gas to market, pipeline capacity and the low price of natural gas has created little incentive to reduce methane emissions.

Daniel Jacob, a professor of atmospheric chemistry and environmental engineering at Harvard University and a co-author of the study, said methane emissions in the Permian are "the largest source ever observed in an oil and gas field."

He added, "There has been a big ramp up in oil production in that region and when you don't care too much about recovering the natural gas, it makes for a large emission."

As a global oil glut threatens to curtail oil production in the region, it remains unclear if methane emissions from the Permian will diminish, or if emissions will continue to climb, as operators scale back monitoring and maintenance operations during the coronavirus pandemic.

"There is going to be a lot less wells being drilled, probably less gas being flared, even wells [that] will [probably] be shut in," said David Lyon, a scientist with the Environmental Defense Fund and a co-author of the study. "If that is done properly, then I think you will have less emissions. At the same time, I wouldn't be surprised if a lot of operators cut back on their environmental staff and they do less leak inspections and other activities that would reduce emissions. They may have less ability to respond to malfunctions and things that cause emissions."

The current study estimates 3.7 percent of all the methane produced from wells in the Permian basin is emitted, unburned, into the atmosphere. That is more than twice the official EPA estimate for the region.

While the percentage may seem small, methane is a super-pollutant that is approximately 84 times more potent as a greenhouse gas than carbon dioxide. It is often called a "short-lived climate pollutant" because it lasts only 12 years in the atmosphere when carbon dioxide can last for centuries. Methane's relatively short life in the atmosphere means that any reduction in methane emissions will have a near-term benefit in helping to slow climate change.

Climate scientists estimate that if just 3.2 percent of all the gas brought above ground at the well leaks into the atmosphere, rather than being burned to generate electricity, natural gas becomes, as a result, worse for the climate than burning coal.

The gas leaked and vented from the Permian makes nearly the same contribution to global warming as carbon dioxide emissions from all U.S. residences, according to the study. If that same volume of methane were to be used instead for residential purposes, it would meet the gas needs of seven million households in Texas, according to the study.

The study was based on 11 months of data from the European Space Agency's Tropospheric Monitoring Instrument (TROPOMI) collected during 2018 and 2019. TROPOMI is a space-based spectrometer that uses infrared imaging to detect the average concentration of methane in columns of the atmosphere averaged across approximately 4 mile by 4 mile sections of the Earth's surface. Launched aboard a European Space Agency satellite in 2017, the device has significantly enhanced researchers' ability to quantify methane emissions across regions like the Permian basin.

The study also draws on data from a U.S. National Oceanic and Atmospheric Administration satellite that detects heat from gas flaring and thereby pinpoints the location of oil and gas wells. When the data from the two different satellites are combined, they show that areas with a high number of wells correspond to areas with high methane concentrations.

"That is important because it adds further confirmation that the high methane concentrations observed in the Permian stem from emissions from oil and gas production," said Riley Duren, a research scientist at University of Arizona and an engineering fellow at NASA's Jet Propulsion Laboratory, who was not involved in the new study.

Leaks May Offset Gains by Reduction in Flaring

The findings confirm data released by the Environmental Defense Fund on April 7 as part of its ongoing PermianMAP project. Drawing on airplane monitoring data, the group concluded that 3.5 percent of methane produced in the Permian was leaking or being intentionally vented into the atmosphere.

The recent report and current study come as EDF and others allege that changes in how the EPA estimates methane releases from oil and gas field facilities has decreased the agency's official emissions estimates, as they appear in its recently released 2020 inventory of greenhouse gas emissions.

"EPA makes updates to methods and data sources periodically when new information is available to improve our emissions calculations," EPA spokesperson Enesta Jones said in a written statement.

American Petroleum Institute senior counselor Howard Feldman, who was also asked to comment on the new study, said, "As with any report, we will review the methods that Harvard used to validate the data and their conclusions."

Feldman said that methane emissions are declining.

"America's natural gas and oil companies," he said, "have initiated multiple initiatives across the U.S., like The Environmental Partnership and the Texas Methane and Flaring Coalition, to build upon the progress we've made to reduce emissions in producing basins like the Permian, during a period of significant oil and natural gas production growth."

Feldman added, "These initiatives underscore the industry's commitment to leveraging new technologies and innovative practices that reduce emissions and establish clear pathways for continuous environmental improvement."

Exxon Mobil Corp. announced earlier this month that it is conducting field trials of various methane detection technologies, including satellite and aerial surveillance monitoring of nearly 1,000 sites across the Permian basin, to further reduce methane emissions.

In 2018, Exxon, as part of a coalition of oil and gas producers known as the Oil and Gas Climate Initiative, pledged to reduce methane emissions from a 2017 baseline of 0.32 percent to 0.25 percent by 2025. The current study's basin-wide estimate of a 3.7 percent rate of emissions suggests that, at least in the Permian, Exxon and other producers are well off of their emission reduction targets.

An April 6 report by the Norwegian energy research firm Rystad Energy noted that flaring in the Permian has decreased from a high of nearly 900 million cubic feet per day in the third quarter of 2019 to approximately 700 million cubic feet per day in the first quarter of 2020. The firm projects that flaring will continue to decline by an additional 40 percent this year as an oil production downturn caused by Covid-19 and the ongoing oil price war continues.\

Flaring significantly reduces methane's greenhouse gas impact. When methane is burned, carbon dioxide is released into the atmosphere instead of methane. Reductions in flaring are typically an indicator that less methane is being wasted and that more of it is being shipped to market via pipelines.

Flaring, however, isn't entirely effective. Flares that aren't operating properly result in incomplete combustion, and the portion of methane that isn't burned by the flare is released into the atmosphere. In other cases, unlit flares allow all the methane that passes through them to vent, unburned, into the air.

Earthworks, an environmental advocacy group, argues that a steady increase in unlit gas flares may offset any benefits from the decreasing volume of flared gas. Field measurements of approximately 100 flares in the Permian basin by the group show that the phenomenon of unlit flares increased from 14 percent of all flares monitored in 2017 to 34 percent in 2020, according to an April 6 report by the group.

Sharon Wilson, a gas imaging specialist for Earthworks, said she anticipates unlit flaring to increase as financial pressure, work restrictions imposed by Covid-19 and the inability of environmental watchdogs to continue field observations, results in decreased maintenance of existing flares.

"At the moment I'm afraid there is all manner of mayhem happening out there," Wilson said.

EDF is now conducting a larger study of unlit wells or wells with incomplete combustion and plans to release its findings in the coming weeks. State regulators in Texas are also considering whether to mandate a reduction or "proration" in the state's oil production, as supply outstrips demand.

EDF is urging the state's Railroad Commission, which regulates oil production, to include mandatory reductions in flaring as part of any requirement to reduce oil production.

"The goal of having flaring as part of proration would be to reduce the volume of gas being flared in the basin," Colin Leyden, a senior manager for regulatory and legislative affairs at EDF said. "Obviously with less flares you'd have less chance of things going wrong."

++

Politico's Morning Energy
OVERSIGHT DEMS PRESS WHEELER ON ENFORCEMENT
https://subscriber.politicopro.com/newsletter/2020/04/biden-ramps-up-climate-talk-787077

OVERSIGHT DEMS PRESS WHEELER ON ENFORCEMENT: Democrats on the House Oversight Committee are requesting a briefing and documents related to EPA's March memo on easing compliance with environmental regulations during the coronavirus pandemic. In a letter to EPA Administrator Andrew Wheeler, the Democrats, led by Chairwoman Carolyn Maloneyand Subcommittee Chairman Harley Rouda, call the guidance "a signal to polluters that they will not face any penalties for poisoning our air and water." The Democrats ask for a briefing before May 1 on the decision-making process for the memo, how it'll affect the environment and vulnerable communities, and its anticipated end date.

The Democrats also request documents from private industry representatives regarding potential changes to EPA enforcement actions from Feb. 26 until March 26, as well as copies of all incidences of non-compliance by a regulated industry on a rolling basis.

An EPA spokesperson called claims in the letter "false." The spokesperson said the agency isn't suspending enforcement of environmental laws and said the guidance does not allow any increases in emissions. "Calling the policy a 'moratorium' only continues to amplify false information and misunderstanding for the public," the spokesperson said, adding that "making facility specific determinations at this time regarding the impact of this emergency would truly shut down EPA's enforcement and compliance assurance program."

++

Bloomberg Environment
Air Purifiers Making Covid-19 Claims Face Legal, Financial Risks
https://news.bloombergenvironment.com/environment-and-energy/air-purifiers-making-covid-19-claims-face-legal-financial-risks
By Adam Allington

Makers of air purifiers and other home health devices will face stiff financial penalties from the EPA if they make inflated or misleading marketing claims that their products can fend off the coronavirus, attorneys say.

In recent weeks, the Environmental Protection Agency has announced a number of enforcement actions targeting both companies and individuals accused of selling illegal products claiming to protect against viruses, including Covid-19.

Antimicrobial devices such air purifiers, ozone generators and UV irradiation units aren't required to go through the same EPA registration process as conventional pesticides. But they're still bound by the same rules governing false or misleading claims under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which the EPA has continued to enforce in full even as it's relaxed regulations in other areas during the pandemic.

"Companies making claims that their device can mitigate coronavirus better be well prepared to back up those claims with data," said Andrew Stewart, a compliance and enforcement attorney with Sidley Austin LLP.

Not doing so could cost a company millions, Stewart said. In 2013, EPA reached a $2.6 million settlement with the EMD Millipore Corporation for violating federal pesticide law.

Given that EPA has independent authority to make judgments and levy fines, Stewart said he would advise clients to proceed with caution.

"It can be very tempting to slap that claim on the product to sell units, but we're operating in an environment of intense scrutiny," Stewart said. "So if you're a device maker, and you face a standard of making no false or misleading statements, you better be prepared with a strong data packet to back up those claims."

Marketing Scrutinized

Along with disinfectant products, the EPA said it plans to hold pesticidal devices, including air purifiers, to the same standard of proof when it comes to marketing their products as a defense against coronavirus.

"It is EPA's intention to pursue enforcement for those products making false and misleading claims regarding SARS-CoV-2," a spokeswoman said in an April 21 statement.

She said the agency is also working the Justice Department and e-commerce platforms to remove and prohibit any fraudulent or ineffective products from the marketplace.

Unlike surface disinfectants, EPA hasn't provided a way for pesticidal devices to win approval to make claims of effectiveness against Covid-19. Compliance attorneys said It's created a regulatory gray area that makes it particularly risky for companies to market their products to customers looking for added protection against coronavirus.

"Making health protection claims can get you in a lot of trouble, and they can often be difficult to prove in a way that regulators are satisfied with," said James Votaw, a partner at Keller and Heckman LLP with a focus on environmental and health and safety regulation.

Further complicating the issue, Votaw said, is that a company can still be held accountable for making misleading statements even if it can produce data showing its product is effective at killing Covid-19, if it doesn't do it in a way that provides public health protection.

"If they're making claims that the device treats the ambient air around us, but the virus isn't expected to be there, it doesn't actually protect anyone," said Sheryl Dolan, a senior regulatory consultant at Bergeson and Campbell PC.

"So, the claims these companies are making could be true, but that's not how you get the virus," she said.

New York State Attorney General Letitia James (D) made that argument last month when she sent cease-and-desist letters to Aller Air Inc., Airpura Industries, and Sylvane Inc., accusing them of making false claims that their air purifiers are effective against coronavirus.

"These companies have been misrepresenting that Covid-19 is primarily an airborne disease & that their $1,500 air purifiers can effectively prevent people from contracting the virus by removing the virus particles from the air," James said in a tweet.

On its website, Aller Air says it supports many "hospitals and medical clinics with air purifiers to help control and reduce the spread of COVID-19 virus."

Interpreting Data

Likewise, James accused Airpura of misleading consumer by citing World Health Organization statements that air purifiers are an effective anti-viral tool, without stating that WHO recommends purifiers only for use in medical environments.

Stacy Singh, Airpura's sales and marketing director, told Bloomberg Law that it was the attorney general who is "endangering the lives of millions of Americans."

She cited a study from the New England Journal of Medicine to bolster the claim that the coronavirus is spread through the air.

"This exact same study we brought to the NY AG's attention was then cited by Dr. Fauci a few days later on April 2, 2020 during a live White House briefing," Singh said in an email, referring to Anthony Fauci, the the director of the National Institute of Allergy and Infectious Diseases.

"The fact that states are recommending that people wear face masks is also an indication that this is an airborne threat," Singh said.

The CDC's position, along with many other health agencies, is that the coronavirus is largely spread through person-to-person contact, or contact with virus-laden droplets expelled through coughing and sneezing.

While coughing and sneezing imply some airborne element, the CDC notes that most of these droplets travel about six feet before dropping out of the air and settling on surfaces. That is why the EPA recommends hand washing, and surface disinfectants from its List N, which have been tested and proven to be effective against Covid-19.

++

https://www.eenews.net/climatewire/2020/04/23/stories/1062945451

'Ghost flights' haunt the skies, increase emissions

Maxine Joselow, E&E News reporter Published: Thursday, April 23, 2020

PANDEMIC

A Delta Air Lines terminal stands vacant Sunday at Los Angeles International Airport. The coronavirus pandemic has sharply curtailed air travel, but many airlines still are flying empty or near-empty airplanes. Kike Calvo/Universal Images Group/Newscom

When Allison Vanore stepped onto a plane last week, she was shocked to find scores of empty seats.

Vanore, a 37-year-old television producer, had an entire row to herself on the United Airlines flight last Thursday from Newark to Los Angeles. Out of roughly 200 seats, only 20 or 30 were filled.

"It felt completely empty. Everyone could spread out as much as they wanted to," she said in a phone interview. "It was a weird experience. And I'm sure it wasn't environmentally friendly."

Near-empty planes have become a common sight for Americans who risk flying during the novel coronavirus pandemic, even as millions of others stay home and shun travel.

Aviation experts even have given this phenomenon an eerie name: "ghost flights." And as Vanore suspected, they're bad news for the planet.

"The environmental consequences of running these flights that are mostly empty are very large," said Annie Petsonk, international counsel at the Environmental Defense Fund.

Petsonk explained that flying remains one of the most carbon-intensive forms of travel. When a plane is full, each passenger is responsible for a smaller share of the total carbon emissions. But when a plane is nearly empty, each passenger is responsible for a much larger amount of planet-warming pollution.

There are several reasons that airlines have continued to operate ghost flights during the pandemic, according to Petsonk and other clean aviation experts.

A big factor is the federal government.

Under the terms of the $2.2 trillion coronavirus relief package passed by Congress last month, the Department of Transportation forced airlines that receive aid to continue providing a minimum number of flights to destinations they served before the pandemic.

In some cases, the DOT requirements have compelled airlines to keep flying to destinations that have seen precipitous drops in passengers.

Approximately 92,859 passengers passed through TSA checkpoints Tuesday, compared with 2,227,475 passengers the same day last year, marking a dramatic 96% drop, according to TSA data.

But spurred by the DOT requirements, airlines only have reduced the number of flights available in the United States by 58% compared with the same period last year, according to the global travel data provider OAG.

"It looks like the Department of Transportation requirements are overly strict. It is a government policy that seems to be keeping more planes in the air and increasing emissions," said Dan Rutherford, program director for marine and aviation at the International Council on Clean Transportation.

To be sure, the DOT requirements aren't the only factor motivating airlines to keep ghost flights in the skies, Rutherford said. Another reason is competition.

"If and when demand picks back up, some airlines want to be the first company that can pick up those customers," he said. "They want to be ahead of the curve when people start flying again."

In addition, it can be difficult and expensive for airlines to store planes that are out of service, he added.

Crunching the numbers

To attempt to quantify the climate impact of ghost flights, E&E News relied on a flight emissions calculator developed by the U.N. International Civil Aviation Organization, a specialized agency of the United Nations.

The calculator allows users to input several pieces of information about a flight, including the origin, destination, number of passengers and cabin class.

Using the information provided by Vanore, E&E News estimated that each passenger on her flight was responsible for 636 pounds of carbon dioxide entering the atmosphere.

Despite the climate consequences, Vanore defended her flight as necessary. She said she traveled to New Jersey to care for family members, including her mother, who was recently diagnosed with cancer.

Allison Venore, a 37-year-old television producer, flew on a nearly empty plane from Newark to Los Angeles last week. Allison Vanore/Twitter

Diane Nigg, the owner of the travel firm Adventures for Alaskans, said she was in a similar situation last month. She felt compelled to fly from Anchorage, Alaska, to the District of Columbia to care for her son, who had recently moved and had expressed concerns about his mental health.

"My son had recently relocated to Washington, D.C., and he asked me for assistance," Nigg said. "He's never asked me for help like that. So I thought I would help him. He was sort of unsettled."

On her journey home, Nigg said there were six people on her Alaska Airlines flight to Anchorage, which had a layover in Los Angeles. According to the flight emissions calculator, each passenger on that flight was responsible for emitting 1,213 pounds of CO2.

What made an impression on Nigg was the emptiness, not the emissions. "It was really like a ghost flight," she said. "It was just dead. Really there wasn't anybody on board. And I felt sorry for the crew. There was a full crew, and there were hardly any passengers."

Craig Cherney, an attorney at Canterbury Law Group, said he flew from Phoenix to Seattle on April 11 for business purposes. He estimated there were 15 people on the flight.

According to the flight emissions calculator, each person on that flight was responsible for emitting 349.3 pounds of CO2. Asked about this environmental impact, Cherney shrugged it off, noting that the dearth of passengers made his travel experience much more pleasant and efficient.

"Getting through security literally took 40 seconds," he said. "It was almost like the dream of flying in America."

Good news on the horizon

There are some signs that ghost flights are on the decline — good news for clean aviation experts and others concerned about their carbon footprint.

The clues can be traced to two recent developments.

First, DOT last week began granting exemptions to the minimum service requirements. The agency on Friday largely granted requests for exemptions by Hawaiian Airlines, Delta Air Lines and Alaska Airlines.

Hawaiian Airlines had asked DOT for permission to suspend flights to Hawaii, which has imposed a mandatory 14-day quarantine for all arriving visitors. Delta had asked the agency for permission to delay the start of its summer schedule.

Previously, DOT had denied requests for exemptions by Spirit Airlines and JetBlue. But on Friday, the agency appeared to acknowledge that airlines face challenges in continuing service to certain destinations, with demand much lower than last year.

"It is not reasonable or practicable for Delta to commence its seasonal summer 2019 baseline schedule immediately," DOT wrote in its decision regarding Delta.

At least one lawmaker has pressed DOT to grant additional requests for exemptions. House Transportation and Infrastructure Chairman Peter DeFazio (D-Ore.), who was spotted on a near-empty flight back to D.C. to vote

on the $2.2 trillion Coronavirus Aid, Relief and Economic Security Act last month, said the department should take action to prevent ghost flights when possible.

"It makes no sense for empty planes to keep flying around the country, putting the safety of flight crews at risk and emitting greenhouse gases into the atmosphere," DeFazio said in an email to E&E News. "That's why I'm pushing DOT to take a holistic, system-wide view of all service exemption requests and consider them together so that the Department does not unintentionally require redundant and unnecessary air service."

He added: "Unprecedented times require DOT to think creatively to ensure we don't cut off communities that depend on reliable air service and cargo shipments, while also avoiding the very real problem of mandating empty planes keep flying around the country."

Asked for comment, DOT spokeswoman Caitlin Harvey said in an email that the department "continues to review additional requests for exemption" on a case-by-case basis.

In a second recent development, several airlines have started transitioning from carrying passengers to carrying cargo, including medical supplies such as COVID-19 testing kits and personal protective equipment (PPE).

Last month, for instance, American Airlines began operating a cargo-only flight full of medical supplies and packages between Dallas and Frankfurt, Germany. It was American's first cargo-only flight since 1984, when the airline retired the last of its Boeing 747 freighters.

Meanwhile, United Airlines has started operating more than 150 cargo-only flights per week between its six U.S. hubs and 13 cities worldwide. The flights are carrying "vital shipments such as medical supplies, kits and PPE," a United spokeswoman said in an email.

Rutherford, of the International Council on Clean Transportation, said the cargo-only flights are a vast improvement over ghost flights from an emissions standpoint.

"What matters is how full the flight is," he said. "So if cargo is moved from a near-empty passenger flight to a full cargo-only flight, that would have the effect of reducing emissions. And that would be a win for the environment."

++
++

https://www.eenews.net/energywire/2020/04/23/stories/1062946459

Satellites find highest U.S. methane emissions ever recorded

Carlos Anchondo, E&E News reporter

Published: Thursday, April 23, 2020

OIL AND GAS

Oil and gas operations in the Permian Basin. Mason Cummings/Wilderness Society

The Permian Basin is producing the largest methane emissions ever reported over a U.S. oil-producing region, according to a new study based on data from satellites.

The research, published yesterday in the journal *Science Advances*, found that wasted methane from oil and gas operations across the shale formation in West Texas and New Mexico provides enough gas to supply 7 million U.S. households. The region is losing methane at a rate equivalent to 3.7% of gas production — 60% higher than the national average leak rate.

"These are the highest emissions ever measured from a major U.S. oil and gas basin," said Steven Hamburg, chief scientist at the Environmental Defense Fund and paper co-author, in a statement. "There's so much methane escaping from Permian oil and gas operations that it nearly triples the 20-year climate impact of burning the gas they're producing."

Although flaring has decreased in the Permian amid the current economic downturn, according to some research firms, methane — a potent greenhouse gas — has long plagued the region. EDF said it sees slashing methane emitted from the oil and gas sector as "the fastest, most cost-effective way" to slow down the rate of global warming.

The research team used 11 months of satellite measurements — from May 2018 to March 2019 — and found that 2.7 million metric tons of the gas leak annually from Permian oil and gas operations. Methane is escaping at twice the average emissions rate of 11 other major U.S. energy-producing regions, they said.

Todd Staples, president of the Texas Oil & Gas Association, said while the group had not fully analyzed the study, it appears to report methane loss rate as a percentage of natural gas produced instead of as a percentage of total hydrocarbon production. The latter would show a lower loss rate, according to TXOGA.

Regardless, he said, the state oil and gas industry is committed to producing energy in "cleaner and more efficient ways."

"Efforts like the industry-led Texas Methane and Flaring Coalition, the Environmental Partnership and the Oil and Gas Climate Initiative are making great strides in minimizing methane emissions and flaring and mitigating environmental impacts," Staples said in a statement. "Through these industry-led programs, industry is developing innovations, pioneering technologies, and achieving efficiencies that are successfully reducing emissions."

The EDF study, which was also worked on by scholars at Harvard University, the Georgia Institute of Technology and the SRON Netherlands Institute for Space Research, built on earlier research focusing on the most active part of the Permian.

That research by the group's PermianMAP initiative said methane was being released from oil and gas operations at a rate of 3.5% (*Energywire*, April 7).

The Texas Methane and Flaring Coalition — which was launched last month — put out a rebuttal to PermianMAP's initial findings earlier this week, calling the 3.5% methane loss rate "deceptive when compared to previous research."

Nicole Jacobs, a spokeswoman for Energy In Depth — a project of the Independent Petroleum Association of America — echoed that statement and said EDF is using "misleading calculations" to arrive at exaggerated leakage numbers.

"Buried in this study was some good news too that didn't make it into EDF's press release," Jacobs said in an email. "Importantly, satellite observations did not see increasing methane emissions trends, despite increased natural gas production. Further, as EDF acknowledges in the study, as more pipelines come online in the near future, leakage rates will decrease."

In the new EDF study, researchers said that although there are a number of factors that incentivize operators to vent and flare their product, they said the above-average leak rate "implies an opportunity" to reduce methane emissions in the region through better design, effective management, regulation and infrastructure development.

Mark Brownstein, EDF's senior vice president for energy, said it's the organization's goal to use their findings to help companies and countries "find, measure and reduce methane emissions further and faster, and enable the public to both track and compare progress."

++

https://insideepa.com/daily-news/army-corps-halting-cwa-permit-coverage-following-pipeline-ruling?s=em1

Army Corps Halting CWA Permit Coverage Following Pipeline Ruling

The Army Corps of Engineers has begun halting new approvals for coverage under a Clean Water Act (CWA) dredge-and-fill general permit that developers of pipelines and other linear projects must seek, according to attorneys, underscoring the effect of a federal court's vacatur and remand of the nationwide permit 12 (NWP 12).

Even before the Trump administration indicates whether it will appeal the landmark district court ruling, industry lawyers say the Corps has already begun halting action nationwide on pending approvals for coverage under NWP 12, highlighting broad concern in the legal community on the impact of the ruling.

"Indeed, just one day after the ruling, the Corps' headquarters and regional offices have begun issuing guidance that Corps districts should not verify any pre-construction notifications ('PCNs') under NWP 12 until further notice to the contrary," attorneys with Nossaman say in a recent alert to clients.

A PCN is generally required for authorization under NWP 12, and work cannot begin before the Corps district engineer provides written verification to the applicant that the proposed activity will comply with the requirements of the NWP.

The alert adds that some Corps offices have gone even further to suggest districts should not authorize any actions under NWP 12 until the Corps and the Justice Department can provide further guidance.

A Corps spokesman has generally declined comment on the ruling. "We have no further information at this time," Chuck Minsker told the *Roanoke Times*.

But a Nossaman attorney says the direction from Corps has occurred in email and phone conversations.

NWP 12 is one of 52 of Corps-issued general permits under CWA section 404 that cover different categories of activities that are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

Developers of pipelines, transmission lines and other "linear" projects must seek coverage under the permit to avoid citizen suits and other enforcement actions.

In this case, Judge Brian Morris of the U.S. District Court for District of Montana ruled April 15 in *Northern Plains Resource Council, et al. v. Army Corps of Engineers* to block construction of portions of the Keystone XL pipeline, which was slated to be covered by NWP 12, on the grounds the Corps failed to address protection of endangered species before issuing the permit.

Morris found the Corps was required to conduct Endangered Species Act (ESA) consultations with federal wildlife agencies when it last revised NWP 12 in 2017.

Attorneys have warned that scores of projects nationwide are at risk of losing permit coverage and many are expecting an appeal or some other effort to limit its scope.

The Corps is likely to dispute the reach of the ruling even if it opts against appealing the entire decision.

For example, attorneys at Beveridge & Diamond have said that while the ruling does not explicitly state that its effect is nationwide, "the Corps will likely file a motion advocating that the order should apply only in Montana, similar to the strategy successfully used to limit the scope of a similar vacatur of NWP 21 several years ago."

But industry and labor groups have made the case to appeal the ruling, arguing that Morris' decision to vacate the permit went well beyond what the plaintiffs challenging the Keystone XL pipeline requested.

Number Of Options

The Nossaman alert notes the Corps has a number of options moving forward. It could request a modification of the court's order, such as requesting the agency not be enjoined from authorizing activities under NWP 12 pending completion of consultation.

The Corps could also appeal the district court's ruling to the U.S. Court of Appeals for the 9th Circuit and seek a stay of the lower court's ruling pending appeal, arguing the lower court's decision will disrupt not only the use of NWP 12, but potentially all other nationwide permits that were adopted without programmatic ESA consultations.

If a stay is granted, project proponents could continue to use NWP 12 until the 9th Circuit ruled.

Another option would be for the Corps to immediately initiate a programmatic ESA section 7 consultation on NWP 12, as it did for the versions of NWP 12 issued in 2007 and 2012, although the Nossaman alert notes the 2012 consultation resulted in disputes between the Corps and the National Marine Fisheries Service that took many years to work through.

The law firm says that if NWP 12 remains unavailable for use, existing requests for verification of PCNs are put into flux, and at a minimum, such PCNs in process must sit idle until the Corps' headquarters issues further guidance that might limit the national effect of the ruling.

And if the Corps ultimately accepts the nationwide effect of the vacatur of NWP 12 pending appeal, then projects that cannot utilize other nationwide permits or regional general permits may be forced to seek individual CWA section 404 permits, which can take years to obtain, the law firm says.

Finally, the alert notes that because the current nationwide permits expire in 2022, it is possible that rather than appeal the court's decision, the Corps will elect instead to move forward with a programmatic section 7 consultation on the 2022 NWPs, and publish such permits as soon as possible. -- *Lara Beaven* (lbeaven@iwpnews.com)

Related News | Energy | Litigation | Natural Gas | Water |

++

https://insideepa.com/daily-news/environmentalists-seek-close-%E2%80%98loopholes%E2%80%99-bid-curb-new-pfas-uses?s=em1

Environmentalists Seek To Close 'Loopholes' In Bid To Curb New PFAS Uses

Even as they push EPA to ban new per- and polyfluoroalkyl substances (PFAS), environmentalists are urging the agency to close a series of "loopholes and exceptions" that they say have allowed continued widespread use of the compounds even in cases where the agency has required toxics law testing or imposed other limits.

In a series of comment letters responding to premanufacture notices (PMNs) over the past few months, a host of local and national groups have urged the agency to end its use of a "trigger volume" or low-volume exemption (LVE) that only requires additional testing to begin unless and until the chemical is produced over a certain amount.

They have similarly urged the agency to drop its use of comparable exceptions for so-called low release and low exposure (LoREX) substances.

The groups are also urging the agency to ensure that future enforcement orders under the Toxic Substances Control Act (TSCA) prevent releases of PFAS as "byproducts," as some have.

They are also calling for a series of affirmative new steps, including designating PFAS as a new chemical category, accelerating use of significant new use rules (SNURs) and addressing PFAS that are not on the TSCA inventory but are being found in the environment.

Further, they are urging EPA to make the PMN process for PFAS more transparent, an issue they are also suing the agency to address more broadly in its new chemicals program, including limiting use of confidential business information claims to increase public data access.

"If EPA issues any orders or rules under TSCA section 5(e) or (f), it should ensure that they are free from the loopholes and exceptions that have made prior TSCA consent orders for PFAS ineffective," environmentalists said in a letter quietly submitted to EPA earlier this month in response to PMNs governing six PFAS.

They charged the data the agency has presented shows the six substances at issue exceed the law's unreasonable risk threshold, but that if the agency is going to approve their PMNs, they should be strictly regulated and be subject to rigorous testing.

Submitted April 9, the comments are signed by national and local groups, including Earthjustice, Environmental Defense Fund, Environmental Working Group, Natural Resources Defense Council, Safer Chemicals Healthy Families, Sierra Club and Merrimack Citizens for Clean Water.

Their call marks just the latest effort from environmentalists and others to get EPA to block approval of new PFAS into commerce even as they struggle to force the agency to set strict regulatory limits governing their releases.

"EPA has approved over 400 PFAS through the TSCA new chemicals program, of which less than half included human toxicity, ecotoxicity, and environmental fate data," the environmentalists letter says. "The six PMN chemicals are merely the latest examples of new PFAS submitted for EPA approval without the studies and data required to evaluate their effects on human health and the environment and therefore without the information needed to support a determination that they are unlikely to pose unreasonable risk," the letter adds.

'Restrictions Must Apply'

The class of over 4,000 chemicals have been widely used in consumer and industrial products, but policymakers are grappling with how to regulate them given concerns about their persistence and health risks.

While the agency has approved hundreds of new PFAS, its new chemicals program is currently facing a June 22 statutory deadline to complete a SNUR governing 500 long-chain perfluoroalkyl carboxylate (LCPFAC) chemicals, including imported substances used in coatings on furniture, automobile parts, electronics, and other household appliances.

But environmentalists are unhappy that the agency is not doing more to limit approvals of new PFAS.

In its most recent letter to the agency, the coalition led by Earthjustice urged EPA to issue an order under section 5(f) to "prohibit the manufacture, processing, and distribution of the six PFAS PMNs because no other restriction would avert unreasonable risk," the letter says.

But the letter adds that if the agency does allow the chemical to be used in commerce, it should use authority under section 5(f) to impose strict worker protection and other requirements including "use of worker personal protective equipment, New Chemical Exposure Limits (NCELs) for worker protection, hazard communication language, distribution and use restrictions, restrictions on releases to water, air and/or land, and recordkeeping."

And they add that before EPA issues orders under section 5(e) for testing or 5(f) to limit exposure, it must also issue a SNUR to ensure that any protections apply to potential manufacturers, processors, and users in addition to the PMN submitters. "Such a SNUR should include all of the protections against unreasonable risk that apply to the PMN submitter, including making it a significant new use not to implement a hierarchy of controls to protect workers," they say.

They say that such restrictions on releases and disposal must apply to these substances whether they are manufactured or processed intentionally or are present as byproducts.

The environmentalists note that a prior order had allowed DuPont to release GenX, a second-generation PFAS, because it was released as a byproduct of a manufacturing process.

"Any restrictions must apply irrespective of whether the chemical is part of an article or not, and irrespective of whether its primary intended use is as an intermediate or in an enclosed system."

They also say that the agency should use TSCA's section 5(e) authority to "order a full array of tests on toxicity and ecotoxicity... [including, but not] limited to: tests for carcinogenicity, reproductive/developmental effects, immunotoxicity, metabolism, pharmacokinetics, and fate, transport, persistence, and biodegradation."

Such testing, they say, should avoid flexibility the agency has provided in previous test orders on PFAS, such as providing LVEs that only require testing to begin unless and until the chemical is produced over a certain volume.

While the agency has previously withheld such "trigger volumes" as confidential business information, in this case, the environmentalists say, that is not permissible because the chemicals already exceed TSCA's risk threshold and therefore their uses or manufacture cannot be allowed.

One environmentalist says that EPA is increasingly approving LVE and LoREX waivers which allow new chemicals to enter commerce, with their numbers "now overtaking the PMN process." The source notes that such approvals are subject to "expedited processes with less options for public input and transparency."

2019 Comments

A separate coalition led by Safer Chemicals, Healthy Families last year also detailed a series of concerns with EPA's PMN review of three other PFAS and asked the agency a series of questions about how it reviews and regulates new PFAS.

For example, it asked what criteria the agency has used to determine whether specific PFAS may present an

unreasonable risk of injury or lack sufficient data for making threshold decisions, whether EPA has treated PFAS as persistent, bioaccumulative and toxic and a host of others.

It called for EPA to issue a report responding to its questions.

And it detailed a series of additional affirmative recommendations, including treating short-chain PFAS as posing similar risks as the long-chain varieties, designating PFAS as a new chemical category and accelerating the use of SNURs to regulate the substances.

Earthjustice also led a coalition that issued similar comments to EPA last October in response to the PMN covering three other PFAS. -- *Diana DiGangi* (ddigangi@iwpnews.com)

Related News | Air | Federal Facilities | Toxics | TSCA Tracker | Waste | Water |

++

https://insideepa.com/daily-news/high-court%E2%80%99s-cercla-ruling-adds-uncertainty-cleanups-lawyers-warn?s=em1

High Court's CERCLA Ruling Adds Uncertainty To Cleanups, Lawyers Warn

The high court's ruling giving state courts jurisdiction to hear contamination damages claims but preserving EPA authority to decide on any additional Superfund remedy may add uncertainty to the finality of cleanup decisions, creating openings for landowners seeking remedy revisions provided they obtain EPA's approval, say attorneys.

The high court's ruling "reaches the reasonable result that the federal government's cleanup decision under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") . . . probably cannot be superseded by a state jury in this case, but it leaves a lot of questions about the implications of state law for federal remedy selection going forward," says David Mandelbaum, an attorney with Greenberg Traurig, in an April 20 article.

And J. Michael Showalter, an attorney with Schiff Hardin, wrote in an April 21 posting on his law firm's website that while the court's opinion stresses "EPA's continued primacy" in deciding remedies and "should give a measure of comfort" to entities that conduct cleanups, "parties still may be vulnerable to state court claims by landowners that convince the EPA that the remedies they request do not threaten overall cleanups."

Such assessments come in response to the high court's April 20 ruling in *Atlantic Richfield Company (ARCO) v. Gregory Christian, et al.*, which held that CERCLA does not preempt state courts from overseeing damages and other claims under state tort law, but at the same time preserved EPA's ultimate cleanup authority by finding landowners seeking a more extensive cleanup remedy through tort claims must first obtain agency approval.

In the case, 98 landowners who own property within the boundaries of the Anaconda Smelter Superfund site, MT, pursued damages claims under state law to institute a cleanup remedy that would go further than EPA's cleanup decision. But ARCO sought Supreme Court review of the case after the Montana Supreme Court ruled in 2017 in favor of the landowners, allowing them to pursue their claims and finding that their restoration damages claim "arises solely under state common law, and does not implicate federal law or cleanup standards."

An 8-1 majority of the court, in an opinion written by Chief Justice John Roberts, rejected ARCO's claims that the landowners' state lawsuit is blocked by section 113(h), the Superfund law's provision barring federal courts from considering pre-enforcement challenges to cleanup plans.

However, Roberts, writing for a separate 7-2 majority, effectively endorsed landowners seeking approval from EPA for their more extensive restoration plan than EPA's Superfund cleanup -- something justices suggested during oral argument in December. In the ruling, the court found that the landowners seeking to add to the remedy are in fact potentially responsible parties (PRPs), and therefore barred by section 122(e)(6) of CERCLA from taking a cleanup action at a Superfund site without EPA's approval.

"Interpreting 'potentially responsible parties' to include owners of polluted property reflects the Act's objective to develop a 'Comprehensive Environmental Response' to hazardous waste pollution," Roberts writes. "Section

122(e)(6) is one of several tools in the Act that ensure the careful development of a single EPA-led cleanup effort rather than tens of thousands of competing individual ones."

Non-Remedial Relief

A former senior EPA official believes the decision will likely boost the number of such state law claims, though the source notes that the Montana restoration law is somewhat unique. Nonetheless, the source believes that "lawyers will be looking at creative ways to get their issues before state courts: looking for non-remedial relief or different ways to press EPA to revisit the cleanup at the site."

This source also believes it "will be interesting to see how EPA and [the Justice Department (DOJ)] respond to this ruling," as the source notes they "had an opportunity to take a stronger position in the brief but took a rather passive approach as the initial case had not been resolved at the state level."

Other attorneys are also questioning how EPA will handle the case on remand and other similar cases that follow. "The disputes regarding such 'additional' remedies will be fierce," Seth Jaffe, an attorney with Foley Hoag, wrote on his law firm's *Law and the Environment* blog April 20.

While arguments have been made in *ARCO* that the landowners' additional remedy is inconsistent with EPA's remedy, he contends there will be other cases where suggested remedies will not be inconsistent with EPA's decision, but may simply be additive.

"The simple answer is that such remedies must not be cost-effective; otherwise EPA would have selected them in the first instance," he says, predicting that the Trump administration will use that as its default position. "However, the world is rarely so black and white and cost-effectiveness is in the eye of the beholder. This issue could get really ugly," he adds, noting that Superfund is once again "the gift to lawyers that keeps on giving."

And Larry Schnapf, a Superfund and brownfields attorney and adjunct professor at New York Law School, tells *Inside EPA* that the court's holding that the landowners may pursue claims in state court "is really not remarkable." And the decision "holds that the defendants cannot seek a different or more extensive cleanup without EPA approval[,] which seems consistent with the pre-enforcement review bar of 113(h)."

But, he notes, "It does seem that every time the Supreme Court decides to wade into the troubled waters of CERCLA, it tends to make things worse and upend years of established CERCLA practice."

An industry attorney also tells *Inside EPA* that as with previous Superfund decisions by the Supreme Court, the *ARCO* decision "resolves some issues while creating further uncertainty on other issues. The decision, however, does generally support EPA's authority to make remedy selection decisions at federal CERCLA sites," the source adds.

Potential Loopholes

Some lawyers see some potential loopholes that could leave remedies open to changes. Mandelbaum, the Greenberg Traurig attorney, says in his article that the court "reads section 122(e)(6) to apply to any person who could have been liable for the site, ignoring any potential defenses. But even reading that broadly, one cannot be certain that all potential state statutory or tort plaintiffs are themselves necessarily 'potentially responsible parties.' Moreover, as in *Arkansas Peace Center*, they may not be seeking additional cleanup, they may be seeking different cleanup."

He points out that if a settlement does not prohibit claims for additional cleanup, "the task becomes that much more difficult. The Supreme Court may have sent the *ARCO* plaintiffs on a quixotic quest for EPA approval that may as a practical matter give the defendant most of what it needed. But that may not be the outcome in every future case," he says.

And Showalter writes in his law firm's posting, "While the gist of the decision is that the EPA has the broad right to determine how a site should be remediated, the Court's decision effectively allows the EPA a back door to permit parties to use state law remedies to compel more stringent cleanups."

"Even though the EPA here stated that it did not approve of the landowners' plan because the plan presented environmental risks, the EPA could theoretically come to a different conclusion in other circumstances or under a different administration without directly undercutting its prior determinations under federal law," he says.

An EPA spokesperson appeared to welcome the ruling. The decision "acknowledges the importance of EPA's role in ensuring a single comprehensive cleanup at Superfund sites across the country," and "reduces the potential for individual cleanups that could conflict with EPA-approved cleanup plans."

As to whether the agency will re-look at the cleanup for the Anaconda site or will issue any guidance as a result of the ruling, the spokesperson says, "EPA is reviewing the decisions and is considering next steps and potential impacts." -- *Suzanne Yohannan* (syohannan@iwpnews.com)

Related News | Mid Day E-mail | Litigation | Waste |

+++

https://insideepa.com/daily-news/epa-deregulatory-agenda-speeds-ahead-possible-covid-hurdles-await?s=em1

EPA Deregulatory Agenda Speeds Ahead But Possible COVID Hurdles Await

EPA continues to advance its deregulatory efforts and is largely rejecting calls from environmentalists and others to halt a suite of rulemakings amid the COVID-19 pandemic, but industry attorneys are warning that does not mean the widespread disruptions caused by the virus will spare the agency's efforts.

That assessment comes as President Donald Trump is soon expected to announce a "sweeping" deregulatory push that highlights how the issue remains a priority throughout the administration, which would add new measures to boost the economy amid the virus-caused downturn.

The agenda could include making permanent some rules that EPA billed as temporary responses to the virus, such as its controversial enforcement discretion policy, as well as other rules that explicitly ease monitoring requirements or soften regulations governing disinfectants' supply chains.

The forthcoming effort could also include a blanket enforcement pass for small businesses as well as more stringent implementation of the president's existing order that two existing rules be canceled for every new rule put in place.

The watchdog group Accountable U.S. is calling the pending plan "shameful" and accusing the administration of responding to a public health crisis that is exacerbated by air pollution by getting rid of environmental safeguards to make life easier for corporate polluters.

But during an April 21 web event hosted by the law firm Arnold & Porter, attorney Allie Conn suggested that the COVID-19 pandemic creates uncertainty for EPA rules that are proposed but not yet finalized, as well as final regulations that are in litigation and measures that have yet to be proposed.

For rules in proposal stage, she noted that EPA is facing requests to postpone hearings and extend public comment deadlines, that there may be additional delays during interagency review at the White House and that some environmental groups and Democratic lawmakers are seeking a pause for all rulemakings unrelated to the pandemic.

"All of this disruption could result in various outcomes," she said. That includes rules that could be pushed into the window where a new Congress could reject them under the Congressional Review Act (CRA) should Democrats retain the House and take over the Senate and the White House after the November elections.

While rulemakings could be rushed in order to avoid such CRA attacks, Conn noted that could pose its own threats. If EPA is found not to have spent the proper amount of time and resources responding to comments, then the rule could be vulnerable to challenges under the Administrative Procedure Act (APA).

EPA has mostly rejected requests for longer public comment periods and additional public hearings, moves that Conn says could also lead to "procedural arguments that the agency is not providing adequate opportunity" for public participation amid the disruptive pandemic, additionally increasing APA litigation risks.

Litigation Delays

Regarding rules that are already complete, court challenges may also be extended and as such not resolved until the next presidential term, which could bring major changes to those cases depending on the outcome of the election.

For example, Conn cited litigation over EPA's Affordable Clean Energy (ACE) coal plant greenhouse gas rule, which is not likely to be argued before the U.S. Court of Appeals for the District of Columbia Circuit until the fall.

If presumptive Democratic nominee Joe Biden wins the presidential contest, that rule could suffer the same fate as its predecessor, the Obama-era Clean Power Plan, in which litigation was never resolved due to the change in administration.

The ACE suit's briefing schedule has been extended due to COVID. "It is interesting to note the D.C. Circuit never decided the Clean Power Plan [case] and it is possible the same thing could happen here," Conn said.

Other rules worth watching closely are EPA's recent proposal to retain the national ambient air quality standard (NAAQS) for particulate matter (PM), which the agency hopes to finalize in late December, and its science "transparency" rule, a rare instance in which it agreed to extend a public comment during the pandemic.

Litigation over some already final rules is also wroth tracking to see how far it advances include suits over EPA's vehicle rule rollback and its Clean Water Act jurisdiction rule, she noted. The latter rule was published in the April 21 *Federal Register* and will be challenged in multiple federal district courts, though many "court houses [are] being closed" and "limited to essential matters."

The auto rule is slated to be published April 30, opening the door to suits in the D.C. Circuit.

Conn said some courts could stay the water rule while others let it go forward, which would bring implementation issues.

Also on the webinar, attorney Ethan Shenkman, who served as general counsel for the Obama EPA, noted that, "Thus far, we are not really seeing the agencies slow down," particularly EPA. "I think the folks at EPA are well used to working remotely and have quite a good system for doing so, and the administration is highly motivated. Just in the past several weeks we've seen some major new rules proposed," he said, citing a proposal to streamline fuel regulations along with the PM NAAQS plan, as well as two new controversial final rules: the vehicle GHG rule and a rollback of power plant mercury standards.

"EPA is not slowing down, and in fact it seems to be churning things out quickly. Whether it can maintain that pace remains to be seen," Shenkman said.

He also warned that parties wanting certain rules to be completed may want to "think carefully about the pros and cons" of running into the CRA lookback period, which includes the last 60 "legislative days" of a congressional session and is expected to begin in about a month.

Stakeholders "will want to think hard about whether in some situations it is better for the agency to move as quickly as possible to beat that deadline and potentially cut corners or rush analyses versus having the agency

take the time and spend the resources required for as robust a record as possible, even if it means having a regulation come out later in the year," he added.

The firm continues to track the issue and updates a list of rules at risk from COVID-19 on its website that includes comprehensive lists of measures in various rulemaking stages. It highlights several EPA rules yet to be proposed including: the ozone NAAQS; exceptions to Toxic Substances Control Act fees rule; a "reset" of renewable fuel standard blending volumes for 2021 and 2022; and a rule to cut nitrogen oxides from heavy-duty trucks.

It is "too early to determine [the pandemic's] effect on the administration's efforts to remake the environmental regulatory landscape, but it is not premature to say that its imprint will be significant," the firm says. -- *Dawn Reeves* (dreeves@iwpnews.com)

Related News | Mid Day E-mail | Air | Climate Policy Watch | Congress | COVID-19 | Litigation | Toxics | Transition 2016-2017 | Water |

++

https://insideepa.com/daily-feed/sab-plans-%E2%80%98rapid%E2%80%99-advice-epa-covid-19-research?s=em1

SAB plans 'rapid' advice on EPA COVID-19 research

EPA's Science Advisory Board (SAB) is planning to convene a panel of experts later this month "to provide rapid advice on scientific and technical issues related to the COVID-19 Pandemic" and opportunities for current and future EPA research activities that might aid the agency's responses to the novel coronavirus.

The panel of experts will be drawn from the chartered SAB, the SAB Chemical Assessment Advisory Committee, and the SAB Drinking Water Committee, and will hold a teleconference April 30, with a teleconference meeting of the chartered SAB scheduled for May 20, according to a *Federal Register* notice scheduled for publication April 23.

EPA Administrator Andrew Wheeler in an April 20 statement said he asked for a rapid review from the SAB to provide feedback on research needs identified by agency scientists.

"EPA's world-class researchers are building on their already expansive body of knowledge to help mitigate the environmental and public health impacts from COVID-19," Wheeler said. Among the areas that agency scientists have identified for research are environmental cleanup and disinfection techniques, virus behavior in wastewater and the air, and procedures for disinfecting personal protective equipment, he said.

Funded primarily through the 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act, EPA researchers have begun evaluating disinfectant efficacy on different types of surfaces in public areas that are frequently touched by multiple people, such as in subway cars, the agency said April 20.

Additionally, EPA and Centers for Disease Control and Prevention researchers are collaborating on research involving environmental cleanup and disinfection, wastewater virus detection and salivary antibody assay development.

For example, researchers are evaluating the use of ultraviolet light, ozone and steam as solutions for large-scale disinfecting needs, such as a school or an office, and they are evaluating whether electrostatic sprayers and foggers used with EPA-approved disinfectants can be effective at killing the virus.

Other research involves determining whether the novel coronavirus, SARS-CoV-2, can be detected in wastewater at levels that could serve as an early warning system to identify an outbreak in a specific community and allow public health agencies to take early action to reduce the spread COVID-19.

And the researchers are developing an easy, non-invasive, and reliable antibody assay to help determine the true infection rate across the country.

Related News | Toxics | Water |

++

https://news.bloombergenvironment.com/environment-and-energy/epa-steps-up-health-protocol-for-cleanup-at-toxic-waste-sites

EPA Steps Up Health Protocol for Cleanup at Toxic Waste Sites

Emergency medical technicians and thermometers should be on hand when conducting toxic waste cleanups to reduce exposure to the coronavirus, the EPA said in an internal memo released Wednesday.

The Environmental Protection Agency is seeking to limit the spread of Covid-19, the disease caused by the coronavirus, at Superfund sites, the most contaminated properties in the country. In the new memo, the agency is recommending having an EMT on site and monitoring staff for coronavirus symptoms, like a fever or cough, while conducting cleanup.

Each site's safety officer should take body temperatures of all staff on a daily basis, the EPA's memo said. For incidents like spills, explosions, or natural disasters that require a large number of responders, staff should consider assigning a safety team to focus on social distancing, handwashing protocol, and other health precautions.

"These guidelines are a consolidated list of health and safety best practices to protect EPA staff and contractors while responding to incidents and conducting work on Superfund sites" during the pandemic, an EPA spokesman said.

When traveling, staff should opt to drive instead of flying, the memo said. Staff should also book hotels with in-room kitchens, purchasing groceries once a week and cooking in the room to avoid eating at restaurants.

The memo was obtained by Public Employees for Environmental Responsibility and distributed through a press release Wednesday.

The organization is concerned the EPA's memo doesn't give staff enough detailed information on what protective gear the agency will provide or who should refrain from site visits.

The agency noted in previous guidance that it would decide on a site-by-site basis whether certain cleanup work can safely continue, while following social distancing guidelines and travel restrictions.

To contact the reporter on this story: Sylvia Carignan in Washington at scarignan@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Anna Yukhananov at ayukhananov@bloombergenvironment.com

++

https://www.reuters.com/article/pet-collar-pesticide-epa/9th-circuit-finds-egregious-delay-on-pet-collar-pesticide-gives-epa-90-days-to-act-idUSL2N2CB0C2

9th Circuit finds 'egregious' delay on pet-collar pesticide, gives EPA 90 days to act

Barbara Grzincic

The Environmental Protection Agency must respond within 90 days to the Natural Resource Defense Council's 2009 petition to ban a pesticide used in some pet collars, shampoos and flea-and-tick treatments, a federal appeals court ruled Wednesday.

The 9th U.S. Circuit Court of Appeals said the EPA has repeatedly "kicked the can down the road" since the NRDC sought to end the use of tetrachlorvinphos (TCVP) in household-pet products, "even as (EPA) has acknowledged that the pesticide poses widespread, serious risks to the neurodevelopmental health of children."

To read the full story on Westlaw Practitioner Insights, click here: bit.ly/3eMUwEg

++

https://news.bloomberglaw.com/environment-and-energy/insight-scotus-montana-superfund-ruling-will-have-ripple-effect

INSIGHT: SCOTUS Montana Superfund Ruling Will Have Ripple Effect

The U.S. Supreme Court issued its opinion on April 20 in *Atlantic Richfield v. Christian*, a closely-watched Superfund case.

The court ruled that a group of individual landowners on a 300 square mile Superfund site in Montana may proceed with state law claims for damages to implement a restoration plan that goes beyond the remedy that the Environmental Protection Agency selected and Atlantic Richfield has been implementing.

The landowners' victory may prove to be nominal, however, as the court also ruled that the relief they seek cannot be awarded unless the EPA approves of their restoration plan, which the EPA has actively opposed.

Although it is uncertain what practical impact the court's somewhat puzzling opinion will have beyond this idiosyncratic case, *Atlantic Richfield* does have significant implications for landowner rights, the EPA's authority, and the role of state law claims and state courts in the Superfund realm.

At Superfund Sites, Federal Authority Retains Primacy ...

The court's most digestible ruling relates to CERCLA § 122(e)(6), which provides that "no potentially responsible party [(PRP)] may undertake any remedial action" at a Superfund site without the EPA's approval.

Reflecting the prevailing view on the meaning of the term PRP, the court held that even though the landowners were unlikely to ever be found liable under CERCLA, they were still PRPs because, as current owners of the property, they fell into one of the four categories of "covered persons" identified in CERCLA § 107. Since the landowners are PRPs, the court ruled that they couldn't implement their restoration plan without the EPA's approval.

The court's ruling reaffirms the EPA's authority to control what occurs at Superfund sites. While the opinion leaves many questions unanswered, what is clear is that landowners must think carefully before undertaking any activity that may be considered a "remedial action."

Although, as the court points out, "remedial action" is defined in part as encompassing enumerated technical activities, the definition is—as the court also acknowledges—"broad", and has been the subject of extensive litigation. The court assures landowners that "planting a garden" does not constitute a "remedial action", but it is unclear whether a landowner would be free to, for example, remove contaminated soil and replace it with clean soil in which to plant that garden.

... at Least for Now

Although as Justice Samuel Alito points out in his partial dissent, the court's ruling on the landowners' status as PRPs was sufficient to dispense with the case, the court chose to address an additional issue. That issue, as it was formally presented to the court, focused on whether the landowners' claim constituted an impermissible "challenge" to the EPA's selected remedy under CERCLA § 113(h).

The court sidestepped that question, however, holding instead that Section 113(h) only bars federal courts—*but not state courts*—from hearing "challenges" to remedial actions. In so ruling, the Supreme Court appears to have laid the foundation for future state law claims that could have the effect of diminishing federal authority over Superfund sites, or at least painting a new layer of uncertainty around EPA-approved remedies.

Section 113(h)'s prohibition against challenging EPA-approved remedial actions provides remediating parties with a level of certainty as to what their remedial obligations (and costs) will be. It also helps prevent litigation delays in cleanups that can already take several decades to complete. By opening the door to challenges in state court, *Atlantic Richfield* threatens to undermine both of these functions. Dissenting on this issue, Alito raised these concerns, warning that there is "much at stake" in allowing such challenges.

It is not clear from the Supreme Court's opinion what types of claims and circumstances would allow a party to challenge a cleanup plan in state court. Moreover, the viability of such claims are tempered by thorny questions pertaining to preemption, sovereign immunity, and statutory interpretation.

And of course, such challenges would also need to be squared with the court's ruling that PRPs cannot take remedial action at Superfund sites without the EPA's approval. Nevertheless, the court's ruling raises the prospect of increased challenges in state courts. These challenges would not necessarily be limited to arguments that the EPA's remedy didn't go far enough; indeed, interested parties could also seek to limit the EPA's remedy.

Two other aspects of *Atlantic Richfield* could lead to a more robust role for state courts and state claims in the CERCLA realm. First, the Supreme Court took a narrow view of CERCLA § 113(b)'s grant to the federal courts of "exclusive original jurisdiction over all controversies arising under" CERCLA, concluding that the grant extends only to causes of action *actually created* by CERCLA.

Second, the court declined to rule on Atlantic Richfield's argument that the landowners' state law claim for restoration damages was preempted by CERCLA. At the very least, the court's silence on the issue encourages impacted parties to seek similar damages where available.

It will take time for the consequences of *Atlantic Richfield* to be felt and understood, but the court's opinion could lead to more challenges centered in state courts and on state law, which is a novel concept in the Superfund world.

This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

Author Information

Peter V. Keays is an attorney in the Environmental Law practice group at Hangley Aronchick Segal Pudlin & Schiller in Philadelphia. He previously served as a law clerk to judges on the U.S. Court of Appeals for the Second Circuit and the U.S. District Court for the District of Montana.

++

WSJ

Shoppers Go Green to Clean Because There Is Nothing Else Left

https://www.wsj.com/articles/shoppers-go-green-to-clean-because-there-is-nothing-else-left-11587645952?mod=searchresults&page=1&pos=1

By Sharon Terlep

More Americans are buying cleaning products marketed as eco-friendly or all-natural, but not necessarily because they want to.

Cleaning mainstays such as Cloroxwipes and Lysol sprays are in short supply in stores and online amid the coronavirus pandemic, leading shoppers to seek alternatives such as the so-called green brands they once passed over, retailers and analysts say.

"There are no mainstream products available, so as a retailer you look to satisfy consumers' needs with whatever products you can find," said Jason Kirsch, who operates the Corner Market & Pharmacy, outside Washington, D.C.

For weeks, he said, he has been unable to secure mainstream cleaning products, so he began to order any brands that had products available, such as Seventh Generation, an eco brand. "Typically, there is available supply of these alternative products," he said.

Store shelves with a handful of green cleaning products sitting next to empty shelves that once held big-brand wipes and sprays have become an increasingly common sight.

On Amazon.com Inc. and TargetCorp. 's website, Clorox and Lysol products are rarely available. While even alternative brands have limited supply, items from brands such as Mrs. Meyer's and Babyganics are often in stock.

Some businesses that have used green products are switching to traditional cleaners, as well, cutting into supplies. Last month,Santander Bank, in an email to customers, said it was "reverting back to traditional disinfectant cleaning products."

U.S. sales of mainstream household cleaners jumped 77% for the four-week period ended April 4 compared with a year ago, according to Nielsen. Sales of cleaners branded as environmentally friendly, a still-small slice of the market, had a 71% bump in the same period.

Chemists and brands say products made with milder or natural ingredients are just as effective as traditional products in fighting coronavirus. Many customers feel more comfortable with a familiar brand right now because of the perception they are tried-and-tested or include more potent chemicals, analysts say.

For home cleaning, the Centers for Disease Control and Prevention recommends cleaning frequently touched surfaces, such as doorknobs and light switches, throughout the day with products that meet the Environmental Protection Agency's criteria for use against SARS-CoV-2, the virus that causes Covid-19.

"We are seeing unprecedented demand in our products, I wish it were under different circumstances," said Seventh Generation Chief Executive Joey Bergstein.

The brand, owned by Unilever PLC, has a line of household cleaners, baby and personal-care products. Its disinfectant products meet the EPA's criteria, the company says on its website.

Mr. Bergstein said that while some newcomers to the brand are buying out of necessity, many people are seeking out natural products as home cleaning becomes a bigger priority.

"The volume of calls we get from people asking where to buy our products is through the roof, so that's not just people looking for anything," he said. "People are cleaning so much now, they are trying to make good choices."

Procter & Gamble Co., maker of Tide detergent and Pampers diapers, has lost consumers to rival brands in cases where its products are in short supply, Jon Moeller, the company's finance chief, said Friday.

"There are consumers that are trying products that they haven't tried before but they aren't necessarily ours," he said, referring to the unit that makes Charmin toilet paper and Bounty paper towels.

Consumers have increasingly demanded more natural products, from food to makeup to laundry soap, in recent years. They have been slower to make the shift when it comes to household cleaners.

Eco cleaners are a niche market in the U.S., comprising roughly 4% of sales in the category, according to Nielsen. Americans spent more than $200 million on mainstream cleaning brands during the week ended April 4, and just over $7 million on green alternatives.

Roughly half of consumers are trying new brands, according to a PricewaterhouseCoopers LLP survey of 1,600 adult consumers conducted March 27 to April 1. In many cases, they are switching because their typical product isn't available or because they are buying from a different retailer which has different offerings, but more than 60% of those surveyed said they plan to stick with a new brand, PwC partner Samrat Sharma said.

Mr. Kirsch, the market owner, said in recent weeks even many smaller and natural brands aren't available. His advice to customers: "I've tried to steer people to bleach," he said. "It's still readily available and, when used properly, it's very effective."

++

E&E
Justices unveil new test on Clean Water Act's scope
https://www.eenews.net/stories/1062951361

By Pamela King

The Supreme Court today found a middle ground in a dispute over whether a Hawaii county should have secured federal permits for a wastewater injection facility that released pollutants into groundwater that later reached the Pacific Ocean, ushering in a new test on the scope of the Clean Water Act.

Justices for the high court instructed the 9th U.S. Circuit Court of Appeals to revisit its determination that Maui County's Lahaina Wastewater Reclamation Facility was subject to Clean Water Act permitting requirements because the pollution in the ocean was "fairly traceable" to the facility's wells.

The court instead adopted a test that Justice Stephen Breyer floated during oral arguments in November 2019.

"The statutory provisions at issue require a permit when there is a direct discharge from a point source into navigable waters or when there is the *functional equivalent of a direct discharge*," Breyer wrote in a 6-3 opinion today in the case *County of Maui v. Hawai'i Wildlife Fund*.

Justice Brett Kavanaugh joined the majority but wrote a separate concurring opinion. Justice Clarence Thomas and Samuel Alito wrote dissenting opinions. Justice Neil Gorsuch joined Thomas' dissent.

During oral arguments, the justices grappled for a limiting test that would prevent regulated parties from ducking Clean Water Act requirements without significantly expanding the statute's reach.

Environmental groups told the court the 9th Circuit's ruling leaves the current program intact, while Maui County said requiring National Pollutant Discharge Elimination System permits for the Lahaina facility would be a significant overhaul of the Clean Water Act. In a dramatic shift from the previous administration, President Trump's EPA said the statute does not apply to groundwater discharges.

Breyer proposed a "functional equivalent of a direct discharge" as a possible threshold, an idea that Chief Justice John Roberts asked Breyer to define (*Greenwire*, Nov. 6).

The Supreme Court remanded the case to the 9th Circuit for further consideration in light of today's opinion.

++

The Hill
Supreme Court hands environmentalists a win in water pollution case
https://thehill.com/regulation/court-battles/494298-supreme-court-hands-environmentalists-a-win-in-water-pollution-case
By John Kruzel

The Supreme Court on Thursday sided with environmentalists by giving a broad reading to the types of water-borne pollution covered by the Clean Water Act.

In a 6-3 decision, the justices held that a permit is required for either a direct discharge of pollutants into federally-regulated rivers and oceans or its "functional equivalent."

"Suppose, for example, that a sewage treatment plant discharges polluted water into the ground where it mixes with groundwater, which, in turn, flows into a navigable river, or perhaps the ocean," Justice Stephen Breyer wrote for the majority."

"Must the plant's owner seek an EPA permit before emitting the pollutant?" he continued, referring to the Environmental Protection Agency. "We conclude that (a permit is required) if the addition of the pollutants through groundwater is the functional equivalent of a direct discharge from the point source into navigable waters."

At issue in the case was whether Maui County in Hawaii violated the Clean Water Act, the landmark 1972 environmental law, by injecting wastewater underground without a permit that then seeped into the Pacific Ocean.

In siding with environmental groups, Breyer was joined by his fellow liberal justices Ruth Bader Ginsburg, Sonia Sotomayor, Elena Kagan, as well as the more conservative justices, Brett Kavanaugh and Chief Justice John Roberts.

Justices Neil Gorsuch and Samuel Alito dissented.

https://bnanews.bna.com/environment-and-energy/permian-basin-oil-fields-leak-enough-methane-for-7-million-homes

Permian Oil Fields Leak Enough Methane for 7 Million Homes (1)

Enough gas to supply 7 million homes is leaking into the atmosphere above oil fields in Texas and New Mexico—the largest plume of climate change-driving methane pollution ever recorded over a U.S. oil field, a new study from Harvard University and Environmental Defense Fund shows.

The methane over the Permian Basin emitted by oil companies' gas venting and flaring is double previous estimates, and represents a leakage rate about 60% higher than the national average from oil and gas fields, according to the research, which was published Wednesday in the journal Science Advances.

"Our study found that the quantity of methane emitted in the Permian Basin are the highest ever measured from any U.S. oil and gas basin. This is a really big deal from a climate standpoint," the study's lead authors, Harvard atmospheric scientist Yuzhong Zhang and EDF scientist Ritesh Gautam, said via email Wednesday.

Methane is the primary component of natural gas. It also is a powerful driver of climate change that is 34 times more potent than carbon dioxide at warming the atmosphere over the span of a century. Eliminating methane pollution is essential to preventing the globe from warming more than 2 degrees Celsius (3.6 degrees Fahrenheit)—the primary target of the Paris climate accord, scientists say.

The Trump administration has taken steps to roll back the Obama administration efforts to cut methane pollution and leaks from oil and gas wells, particularly with the Bureau of Land Management's 2016 Waste Prevention Rule and the Environmental Protection Agency's oil and gas emissions standards.

$250 Million Worth of Methane

The Permian Basin's methane pollution accounts for about 10% of the total global increase in methane emissions from 2010 to 2020, Robert Howarth, a Cornell University biogeochemist studying fugitive methane emissions from oil and gas fields, said. He was unaffiliated with the study.

"We need to be reducing methane emissions, not allowing them to grow," Howarth said. "When these sort of emission rates are considered, methane makes the greenhouse gas footprint of natural gas far worse than even that of coal."

Levels of methane in the atmosphere have been steadily rising since 2004 and spiked in 2019, according to National Oceanic and Atmospheric Administration data released April 5.

All told, Zhang and Gautam found that up to 2.7 teragrams of methane are leaking into the atmosphere in the basin.

The researchers used satellite data gathered in 2018 and 2019 to measure and model methane escaping from gas fields in the Permian Basin, which stretches across public and private land in west Texas and southeastern New Mexico.

"These emissions are a major climate problem as well as a huge waste of resources," Zhang and Gautam said. "This research shows the tremendous potential for satellites to measure greenhouse gas emissions."

The leaking and flaring of methane had a market value of $250 million as of Wednesday afternoon, said Jon Coifman, communications director at the Environmental Defense Fund.

Industry View

Methane pollution is common in shale oil and gas fields such as those in the Permian Basin because energy companies vent and burn off excess natural gas when there are insufficient pipelines and processing equipment to bring the gas to market. About 30% of U.S. oil production occurs in the Permian Basin, and high levels of methane pollution have been recorded there in the past.

Industry groups such as the Texas Methane and Flaring Coalition have criticized previous EDF methane emission research. The coalition aims to address venting and flaring issues in the Permian and other oil-producing basins in Texas and was formed in March by a group of Texas oil companies and trade associations and led by the Texas Oil and Gas Association.

In the last three weeks, the coalition has repeatedly said EDF's earlier Permian pollution data were exaggerated and flawed.

The Texas Oil and Gas Association will review the study, but the Texas Methane and Flaring Coalition is making "great strides" in cutting methane emissions from venting and flaring, Texas Oil and Gas Association President Todd Staples said.

"Through these industry-led programs, industry is developing innovations, pioneering technologies, and achieving efficiencies that are successfully reducing emissions," Staples said.

The Texas Railroad Commission, which regulates the oil and gas industry in Texas, allows companies to flare and vent their excess gas. The commission didn't respond to a request for comment.

A 'Top Down' Approach

Zhang and Gautam's use of satellites to measure methane is a different approach than the methods used by federal agencies, including the EPA, which base their estimates on expected leakage rates at oil and gas production equipment on the ground.

A "top-down" approach to measuring methane using aircraft or satellite data almost always reveals higher levels of methane emissions than the EPA's "bottom-up" approach, Howarth said.

EDF has been working with universities and energy companies since 2012 to study methane emissions from oil and gas fields nationwide.

A separate February analysis by Oslo-based Rystad Energy, an independent research company, found less methane pollution escaping from the Permian than the EDF and Harvard researchers found. Rystad found enough leakage to supply gas to 5 million homes.

To contact the reporter on this story: Bobby Magill at bmagill@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Renee Schoof at rschoof@bloombergenvironment.com

++

The Hill

House Democrats press EPA on clean air in minority communities
https://thehill.com/policy/energy-environment/494244-house-democrats-call-on-epa-to-ensure-minority-low-income
By Rebecca Klar

House Democrats are calling on the Environmental Protection Authority (EPA) to ensure that minority and low-income communities have equal access to clean air protections amid the coronavirus pandemic.

In a letter spearheaded by Rep. Bobby Rush (D-Ill.) and signed by 83 House Democrats, lawmakers noted reports of minority and low-income communities dying at disproportionate rates of COVID-19, as well as a recent Harvard University study that concluded that patients in areas with higher air pollution levels are at a greater risk of dying from the disease.

"For these reasons, we are alarmed by EPA — the agency authorized to enhance clean air protections — taking actions that are contrary to its mission," Democrats wrote in the letter sent to EPA administrator Andrew Wheeler on Wednesday.

The Democrats wrote that the EPA under the Trump administration has rolled back "nearly 100 environmental regulations," a quarter of which "dismantled much needed air pollution and emissions regulations."

"The correlative nature between this pandemic and the very core of EPA's work, which is to protect human health and the environment, necessitates swift action to secure equal rights to vital clean air protections. We, therefore, urge prompt intervention to prevent irreversible harm to our communities," the Democrats wrote.

In a statement to The Hill on Thursday, the EPA rejected the claims, saying the letter relies on "false conclusions drawn by the Harvard study."

"As we have stated before, the study's authors have misinterpreted our temporary enforcement guidance and the study is being used by the House Members to perpetuate misinformation about EPA's [National Ambient Air Quality Standards] proposal," the EPA said in a statement.

"Additionally, the Members misrepresent the action taken under our final [Mercury and Air Toxics Standards] rule. No more mercury or any other hazardous air pollutant will be emitted into the air than before. EPA is maintaining its mercury and air toxics emissions standards," the EPA added.

The EPA late last month issued a memo suspending the enforcement of environmental laws, telling companies that they would not need to routinely monitor or meet environmental standards during the coronavirus outbreak. The temporary policy has no end date.

More than 840,000 confirmed COVID-19 cases and 46,611 deaths have been reported across the U.S., according to data compiled by Johns Hopkins University.

++

Dallas Morning News
Frisco student wins President's Environmental Youth Award from EPA on Earth Day's 50th anniversary
https://www.dallasnews.com/news/environment/2020/04/23/frisco-student-wins-presidents-environmental-youth-award-from-epa-on-earth-days-50th-anniversary/
By Brandi Addison

The U.S. Environmental Protection Agency announced that Frisco resident Prince Nallamothula is among the winners of the President's Environmental Youth Award for a mobile app he developed to raise awareness of community recycling.

Nallamothula is one of two winners in EPA Region 6, which spans across Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

"Students like Prince give us all an example to live up to — if you find a problem, become part of the solution," regional administrator Ken McQueen said in a news release. "Thank you, Prince, for putting science into action to help our environment. There is no better way to celebrate the 50th anniversary of Earth Day."

The 10-year-old Nallamothula surveyed his community and learned that less than a third of respondents recycled their household waste, and over two-thirds were not certain of what they could recycle, according to the release.

Hoping to increase participation, Nallamothula developed the "3RApp" — named after the popular "reduce, reuse, recycle" phrase — which allows users to scan a product's bar code to see if it can be recycled and view suggestions on how the product could be reused.

The app can also be linked to smart devices, including trash cans, to open the correct compartment based on whether the items are recyclable, according to the release.

"As we celebrate the 50th Anniversary of Earth Day, we are also celebrating nearly 50 years of environmental education that fosters awareness about conservation issues, and helps communities make informed, responsible decisions about their environment," EPA Administrator Andrew Wheeler said in the release.

Thirty-five students around the country, from kindergarten through 12th grade, will receive the award for the stewardship projects.

++

https://www.asbestos.com/news/2020/04/23/epa-asbestos-review-covid-19/

EPA Asbestos Review Delayed Due to COVID-19 Pandemic

Tim Povtak

The U.S. Environmental Protection Agency postponed indefinitely a peer review of the recent asbestos risk evaluation draft done by its Science Advisory Committee on Chemicals.

A peer review virtual meeting was scheduled for April 27-30, but several independent scientific experts on the panel are no longer available. A Bloomberg Law article published this week explained that several health professionals serving on the committee could not attend because they needed to "give their full attention to the coronavirus crisis."

No date for the rescheduling was announced.

"The agency believes that rescheduling for a time when more members are available is critical and will allow for a more robust review of the evaluation," according to the EPA press release announcing the postponement.

A peer review of the draft is a step toward the EPA's final risk evaluation for asbestos, the ninth of the first 10 substances and chemicals to undergo increased scrutiny as part of the amended Toxic Substances Control Act.

Written public comments, which will be presented to the Science Advisory Committee on Chemicals, will be accepted until June 2.

Evaluation of Asbestos Continues

Once the SACC finishes the evaluation process, the EPA will have the option of proposing further regulations to prohibit or limit the manufacture, use, distribution, processing or disposal of asbestos.

Asbestos, which was once used ubiquitously in America, is heavily regulated today because of its dangerous toxicity. It is a naturally occurring mineral that can provide tensile strength and heat resistance to a wide range of products.

Exposure to asbestos can lead to ingestion or inhalation of microscopic asbestos fibers. These fibers can cause serious health problems, including mesothelioma and lung cancer.

Asbestos has not been mined in the U.S. since 2002. An estimated 100 metric tons of asbestos were imported in 2019, the smallest amount since records were first kept in 1910.

All raw asbestos imported today goes to the chloralkali industry, which uses it to manufacture semipermeable diaphragms for making chlorine.

EPA Assessment Finds Unreasonable Asbestos Risk

One of the biggest threats to the public today is legacy asbestos, products that were manufactured 30 years ago but remain in place throughout residential and commercial construction.

The draft risk evaluation by the SACC in March, which looked at 33 conditions of use, found "unreasonable risk" in the limited products still being used today. The SACC draft cited:

- Asbestos diaphragms in the chloralkali industry
- Asbestos-containing brake blocks in the oil industry
- Asbestos-containing sheet gaskets in chemical production
- Automobile aftermarket asbestos-containing brake linings
- Automobile friction products
- Commercial use of asbestos-containing gaskets

"EPA found that workers, occupational non-users, consumers and bystanders could be adversely affected by asbestos under certain conditions of use," the draft reported.

The EPA found no unreasonable risks to the environment, or from the import and distribution of asbestos and asbestos products.

It did not evaluate exposures to the general population.

++

Associated Press
Supreme Court rejects EPA's narrow view of Clean Water Act
https://apnews.com/fcee565b9fed5b001e9b3fce9ed00c24
By MARK SHERMAN

WASHINGTON (AP) — The Supreme Court ruled Thursday that sewage plants and other industries cannot avoid environmental requirements under landmark clean-water protections when they send dirty water on an indirect route to rivers, oceans and other navigable waterways.

Rejecting the Trump administration's views, the justices held by a 6-3 vote that the discharge of polluted water into the ground, rather than directly into nearby waterways, does not relieve an industry of complying with the Clean Water Act.

"We hold that the statute requires a permit when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge," Justice Stephen Breyer wrote for the court.

The decision came in a closely watched case from Hawaii about whether a sewage treatment plant needs a federal permit when it sends wastewater deep underground, instead of discharging the treated flow directly into the Pacific Ocean. Studies have found the wastewater soon reaches the ocean and has damaged a coral reef near a Maui beach.

The Environmental Protection Agency under President Donald Trump reversed the agency's position that Breyer noted has appeared to work well for more than 30 years.

Justices Samuel Alito, Neil Gorsuch and Clarence Thomas dissented. "Based on the statutory text and structure, I would hold that a permit is required only when a point source discharges pollutants directly into navigable waters," Thomas wrote.

David Henkin, a lawyer for the environmental group Earthjustice who argued the case in the high court, said, "This is unquestionably a win for people who are concerned about protecting clean water in the United States."

Sewage plants and other polluters must get a permit under the Clean Water Act when pollutants go through a pipe from their source to a body of water. The question in this case was whether a permit is needed when the pollutant first passes through the soil or groundwater.

Maui injects 3 million to 5 million gallons a day of treated wastewater into wells beneath the Lahaina Wastewater Reclamation Facility, which sits about a half-mile from the Pacific shoreline. Environmental groups in Hawaii sued Maui after studies using dyes to trace the flow showed more than half the discharge from two wells was entering the ocean in a narrow area. They won a ruling from the federal appeals court based in San Francisco.

Breyer raised concerns during arguments in November that a ruling for Maui would provide a "road map" for polluters to evade federal permit requirements.

Still, the court did not go as far as the federal appeals court, which adopted a standard that would have brought even more groundwater discharges under the clean water law.